IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

WEDNESDAY, THE 28TH FEBRUARY 2007 / 9TH PHALGUNA 1928

WP(C).No. 27440 of 2006(N)

EP 14/06 IN OS.157/2004 of SUB COURT, KATTAPPANA

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PETITIONER:

ABRAHAM ABRAHAM, S/O. ABRAHAM,
PATTALIL HOUSE, SPRING VALLEY P.O.,
PERIYAR VILLAGE, PEERMEDU TALUK.

BY ADV. SRI.R.PREM SANKAR
SRI.B.PREMOD

RESPONDENT:

CENTRAL BANK OF INDIA, KUMILY
REP. BY ITS BRANCH MANAGER.

BY ADV. SRI.DEVAN RAMACHANDRAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARDON 28/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WPC 27440/06

PETITIONER'S EXHIBITS:

EXT. P1	**PHOTOCOPY OF THE PLAINT IN OS 157/04 ON THE FILE OF SUB COURT, KATTAPPANA**
EXT. P2	**PHOTOCOPY OF THE EXECUTION PETITION IN EP 14/06 ON THE FILE OF THE SUB COURT, KATTAPPANA**
EXT. P3	**PHOTOCOPY OF THE SALE NOTICE IN EP 14/06**
EXT. P4	**PHOTOCOPY OF THE REPRESENTATION PREFERRED BY THE PETITIONER BEFORE THE CHIEF MINISTER**
EXT. P5	**PHOTOCOPY OF THE INTIMATION SHOWING THE RECEIPT OF THE REPRESENTATION**
EXT. P6	**PHOTOCOPY OF THE AGREEMENT FOR SALE DT. 15.10.06**

/TRUE COPY/

K.P. Balachandran, J.

W.P.(C)No. 27440 of 2006 N

JUDGMENT

The petitioner is the first judgment debtor in E.P.No.14/06 in O.S.No.157/04 on the file of the Sub Court, Kattappana. When the property was brought to sale in execution of the decree in favour of the respondent Bank, this writ petition was filed by the petitioner with the following prayers:

> "i. to set aside Exhibit P3 notice for sale in the light of Exhibit P6 on a finding that the upset price fixed for the property is not adequate in accordance with the market value of the property.
>
> ii. to allow the petitioner to sell a portion of 21 cents of the property personally to the person mentioned in

Exhibit P6 so as to satisfy the decree debt.

iii. any other appropriate order that is deemed fit in the circumstances of the case."

The prayer to set aside Exhibit P3 notice, which is a sale proclamation, was made on the ground that there is Exhibit P6 agreement for sale of twenty one cents of property, entered into by him with one Sebastian,S/o K.K.Mathew, for a total consideration of Rs.11,75,000/- and that the decree amount being only less than Rupees six lakhs, the petitioner can be granted permission to effectuate the said sale by private negotiation, so that the entire decree debt can be cleared. It is also his grievance that the upset price fixed for the property is much less.

2. With leave to sell the property by private negotiation, if at all the transaction proposed to

be effected can be effected in performance of Exhibit P6 agreement, the petitioner can move the execution court for such leave on condition of depositing the entire decree debt by the proposed vendee, so that there will not be any difficulty for the execution court to allow the application and the decree holder also cannot object if the decree is satisfied. If the petitioner bona fide wants to clear off the debt in that fashion, he can move for such leave, depositing the entire decree debt, causing it to be deposited by the proposed vendee.

This writ petition is devoid of merit and is, hence, dismissed.

28th February, 2007 (K.P.Balachandran, Judge)

tkv